

REMARKS

Applicant requests reconsideration and allowance in view of the following remarks. In the Office Action, mailed May 15, 2003, the Examiner subjected the pending claims to a requirement of restriction between four groups (I. through IV.). Applicant provisionally elects the claims of Group II for prosecution in the present application (and provisionally cancels all other claims in the present application) and respectfully traverses the restriction requirement.

Currently in the application, claims 1-3, 20-24, 53, 46-48, 54-56, 63, 64, 67, 72, 75, 79, 82, 84-101, 112-115, 118, 129-132, 135 and 140-143 are canceled (or, as stated by the Examiner, withdrawn from consideration) and claims 4-19, 25-42, 44, 45, 49-53, 57-62, 65, 66, 68-71, 73, 74, 76-78, 80, 81, 83, 102-111, 116, 117, 119-128, 133, 134, 136-139 and 144-149 are pending. In the Office Action the Examiner divided the pending claims into the following four Groups:

- I. Claims 16-19, 49-53, 57-62 and 83;
- II. Claims 25-42, 44 and 45;
- III. Claims 4-15, 102-111, 116, 117, 119-128, 133 and 134; and
- IV. Claims 65, 66, 68-71, 73, 74, 76-78, 80, 81, 136-139 and 144-149.

Applicant respectfully draws the Examiner's attention to the following quotation taken from the Manual of Patent Examining Procedure regarding when (and only when) a restriction requirement is proper:

Under the statute an application may properly be required to be restricted to one of two or more claimed inventions only if they are able to support separate patents and they are either independent or distinct.

If the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions.

CRITERIA FOR RESTRICTION BETWEEN PATENTABLY DISTINCT INVENTIONS

There are two criteria for a proper requirement for restriction between patentably distinct inventions:

- (A) The inventions must be independent; and

(B) There must be a serious burden on the examiner if restriction is required.

MPEP § 803 pp. 800-3 & 800-4 (August 2001) (citations omitted) (emphasis added).

Specifically, Applicant points to the two underlined segments of the above quotation. A restriction requirement is proper only when there is a serious burden on the Examiner if the restriction is not made. The Examiner MUST examine the application on the merits if there is no serious burden, even though the application might include independent or distinct inventions.

Based on the prosecution history to date in the present application, Applicant asserts that there is NO BURDEN on the Examiner, much less a serious burden, to warrant the pending restriction requirement. In fact, Applicant contends that the Examiner has already searched, thoroughly examined and either allowed or found allowable each and every currently pending claim of the present application. Therefore, due to the lack of a serious burden, the Examiner is urged to withdraw the pending restriction requirement and allow the application.

Detailed Discussion

Applicant traverses the restriction requirement on the grounds that all of the subject matter of the pending claims has been previously searched and examined by the Examiner and that these pending claims were either Allowed or deemed Allowable by the Examiner in Paper No. 13. As such, there is no serious burden on the Examiner. Paper No. 13 of the present application is the Final Office Action mailed June 18, 2002 (hereinafter, "the Previous Office Action"). Applicant responded to the Previous Office Action on December 18, 2002 (hereinafter, "the Most Recent Response").

To aid the Examiner in following the detailed discussion of the pending claims in the present application, presented below, Applicant has included as the Appendix hereto a detailed breakdown of every claim in the present application. The first column of the Appendix is the claim number. The next two columns indicate the claim status and independent/dependent status of the claims as of the Previous Office Action. The final two columns indicate the claim status and independent/dependent status of the claims after the Most Recent Response (and therefore, as of the restriction requirement).

In the Previous Office Action, the Examiner rejected the following claims (not including §112, second paragraph rejections, which Applicant has addressed):

1, 2, 20-24, 43, 47, 54-56, 63-64, 79, 84-101, 112-115, 118, 129-132, 135 and 141-143.

In the Most Recent Response, Applicant canceled the following claims:

1, 2, 20-24, 43, 47, 54-56, 63-64, 79, 84-101, 112-115, 118, 129-132, 135 and 140-143 (claims 3, 46, 48, 67, 72, 75 and 82 were previously canceled). As is readily apparent, in the Most Recent Response, Applicant cancelled all claims that the Examiner had rejected under 35 U.S.C. §§ 102-103.

Also in the Previous Office Action, the Examiner allowed claims 4-19, 51-53, 57-62, 65, 66, 68-74, 76-78 and 83. Note that these allowed claims from the Previous Office Action were not substantively amended in the Most Recent Response. Yet, these previously allowed claims are now split across three separate restriction Groups: I, III and IV. Applicant asserts that, because the Examiner had allowed these claims in the Previous Office Action, it is now arbitrary and capricious to require their restriction. Further, because the Examiner had allowed these claims in the Previous Office Action, there is NO BURDEN placed on the Examiner at this time by withdrawing the restriction.

Further in the Previous Office Action, the Examiner noted the allowability of the following claims if rewritten to include all of the limitations of the base claim and any intervening claims: 25-42, 44, 45, 49, 50, 80, 81, 102-111, 116, 117, 119-128, 133, 134, 136-140 and 144-149. In the Most Recent Response, Applicant amended the following dependent claims to be rewritten in independent form and to include all intervening elements of the claims from which each depended: 25, 31, 39, 42, 49, 80, 102, 106, 116, 119, 124, 133, 136, 144, 146. The remaining claims the Examiner noted as allowable depend from one of these rewritten independent claims (Applicant requests that the Examiner studies the last two columns of the Appendix to verify Applicant's contentions). Yet now, these previously allowable claims are split across all four separate restriction Groups: I, II, III and IV. Applicant again asserts that, because the Examiner had noted these claims as allowable in the Previous Office Action, it is now arbitrary and capricious to require their restriction. Further, because the Examiner had

noted these claims as allowable in the Previous Office Action, there is NO BURDEN placed on the Examiner at this time by withdrawing the restriction.

In summary, because the Examiner has substantively examined all of the pending claims in the present application, and further, because the Examiner has either allowed or found allowable all of the pending claims in the present application, there is NO BURDEN on the Examiner by maintaining all of the pending claims in the present application. Therefore, Applicant respectfully requests withdrawal of the restriction requirement and urges the Examiner to allow all of the pending claims in the present application.

Conclusion

Applicant reserves the right to file one or more divisional applications directed to the non-elected Groups. If any points remain in issue that the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly requested to contact the undersigned at the telephone number listed below.

CHARGE STATEMENT: The Commissioner is hereby authorized to charge fees that may be required relative to this application, or credit any overpayment, to our Account 03-3975, Order No. 012907-0239352 (VG-001).

Respectfully submitted,
PILLSBURY WINTHROP LLP

By: 
Ross L. Franks, Reg. No. 47,233
For: David A. Jakopin, Reg. No. 32,995

2550 Hanover Street
Palo Alto, CA 94304-1115
Tel. No. (650) 233-4897
Fax No.: (650) 233-4545

60330234

APPENDIX

Claim	Status at Previous Office Action		Status after Most Recent Response	
1	Rejected	Independent	Canceled	n/a
2	Rejected	Independent	Canceled	n/a
3	Withdrawn	n/a	Canceled	n/a
4	Allowed	Independent	Unchanged	Independent
5	Allowed	Dep. on 4	Unchanged	Dep. on 4
6	Allowed	Dep. on 5	Unchanged	Dep. on 5
7	Allowed	Dep. on 5	Unchanged	Dep. on 5
8	Allowed	Dep. on 4	Unchanged	Dep. on 4
9	Allowed	Dep. on 4	Unchanged	Dep. on 4
10	Allowed	Dep. on 4	Unchanged	Dep. on 4
11	Allowed	Dep. on 4	Amended	Dep. on 4
12	Allowed	Dep. on 4	Amended	Dep. on 4
13	Allowed	Dep. on 4	Amended	Dep. on 4
14	Allowed	Dep. on 4	Amended	Dep. on 4
15	Allowed	Dep. on 4	Amended	Dep. on 4
16	Allowed	Independent	Unchanged	Independent
17	Allowed	Dep. on 16	Unchanged	Dep. on 16
18	Allowed	Dep. on 17	Unchanged	Dep. on 17
19	Allowed	Dep. on 16	Unchanged	Dep. on 16
20	Rejected	Independent	Canceled	n/a
21	Rejected	Dep. on 20	Canceled	n/a
22	Rejected	Independent	Canceled	n/a
23	Rejected	Dep. on 22	Canceled	n/a
24	Rejected	Independent	Canceled	n/a
25	Allowable	Dep. on 24	Amended	Independent (+claim 24 elements)
26	Allowable	Dep. on 24	Amended	Dep. on 25
27	Allowable	Dep. on 24	Amended	Dep. on 25
28	Allowable	Dep. on 24	Amended	Dep. on 25
29	Allowable	Dep. on 24	Amended	Dep. on 25
30	Allowable	Dep. on 24	Amended	Dep. on 25
31	Allowable	Dep. on 24	Amended	Independent (+claim 24 elements)
32	Allowable	Dep. on 31	Unchanged	Dep. on 31
33	Allowable	Dep. on 32	Unchanged	Dep. on 32
34	Allowable	Dep. on 31	Amended	Dep. on 31
35	Allowable	Dep. on 31	Unchanged	Dep. on 31

Claim	Status at 6-18-2002 Office Action		Status after 12-18-2002 Amendment	
36	Allowable	Dep. on 31	Unchanged	Dep. on 31
37	Allowable	Dep. on 31	Unchanged	Dep. on 31
38	Allowable	Dep. on 31	Unchanged	Dep. on 31
39	Allowable	Dep. on 24	Amended	Independent (+claim 24 elements)
40	Allowable	Dep. on 39	Unchanged	Dep. on 39
41	Allowable	Dep. on 40	Unchanged	Dep. on 40
42	Allowable	Dep. on 24	Amended	Independent (+claim 24 elements)
43	Rejected	Dep. on 24	Canceled	n/a
44	Allowable	Dep. on 24	Amended	Dep. on 42
45	Allowable	Dep. on 24	Amended	Dep. on 42
46	Withdrawn	n/a	Canceled	n/a
47	Rejected	Independent	Canceled	n/a
48	Withdrawn	n/a	Canceled	n/a
49	Allowable	Dep. on 47	Amended	Independent (+claim 47 elements)
50	Allowable	Dep. on 49	Unchanged	Dep. on 49
51	Allowed	Independent	Unchanged	Independent
52	Allowed	Dep. on 51	Unchanged	Dep. on 51
53	Allowed	Dep. on 51	Unchanged	Dep. on 51
54	Rejected	Independent	Canceled	n/a
55	Rejected	Independent	Canceled	n/a
56	Rejected	Independent	Canceled	n/a
57	Allowed	Dep. on 51	Unchanged	Dep. on 51
58	Allowed	Dep. on 57	Unchanged	Dep. on 57
59	Allowed	Dep. on 57	Unchanged	Dep. on 57
60	Allowed	Dep. on 51	Unchanged	Dep. on 51
61	Allowed	Dep. on 60	Unchanged	Dep. on 60
62	Allowed	Dep. on 60	Unchanged	Dep. on 60
63	Rejected	Independent	Canceled	n/a
64	Rejected	Dep. on 63	Canceled	n/a
65	Allowed	Independent	Unchanged	Independent
66	Allowed	Dep. on 65	Unchanged	Dep. on 65
67	Withdrawn	n/a	Canceled	n/a
68	Allowed	Independent	Unchanged	Independent
69	Allowed	Dep. on 68	Unchanged	Dep. on 68
70	Allowed	Dep. on 68	Unchanged	Dep. on 68
71	Allowed	Independent	Unchanged	Independent

Claim	Status at 6-18-2002 Office Action		Status after 12-18-2002 Amendment	
72	Withdrawn	n/a	Canceled	n/a
73	Allowed	Dep. on 71	Unchanged	Dep. on 71
74	Allowed	Dep. on 73	Unchanged	Dep. on 73
75	Withdrawn	n/a	Canceled	n/a
76	Allowed	Dep. on 71	Unchanged	Dep. on 71
77	Allowed	Dep. on 76	Unchanged	Dep. on 76
78	Allowed	Independent	Unchanged	Independent
79	Rejected	Independent	Canceled	n/a
80	Allowable	Dep. on 79	Amended	Independent (+claim 79 elements)
81	Allowable	Dep. on 80	Unchanged	Dep. on 80
82	Withdrawn	n/a	Canceled	n/a
83	Allowed	Dep. on 51	Unchanged	Dep. on 51
84	Rejected	Dep. on 1	Canceled	n/a
85	Rejected	Dep. on 1	Canceled	n/a
86	Rejected	Dep. on 85	Canceled	n/a
87	Rejected	Dep. on 85	Canceled	n/a
88	Rejected	Dep. on 20	Canceled	n/a
89	Rejected	Dep. on 88	Canceled	n/a
90	Rejected	Dep. on 88	Canceled	n/a
91	Rejected	Dep. on 20	Canceled	n/a
92	Rejected	Dep. on 91	Canceled	n/a
93	Rejected	Dep. on 91	Canceled	n/a
94	Rejected	Dep. on 54	Canceled	n/a
95	Rejected	Dep. on 94	Canceled	n/a
96	Rejected	Dep. on 79	Canceled	n/a
97	Rejected	Dep. on 96	Canceled	n/a
98	Rejected	Independent	Canceled	n/a
99	Rejected	Dep. on 98	Canceled	n/a
100	Rejected	Dep. on 99	Canceled	n/a
101	Rejected	Dep. on 99	Canceled	n/a
102	Allowable	Dep. on 98	Amended	Independent (+claim 98 elements)
103	Allowable	Dep. on 102	Unchanged	Dep. on 102
104	Allowable	Dep. on 103	Unchanged	Dep. on 103
105	Allowable	Dep. on 103	Unchanged	Dep. on 103
106	Allowable	Dep. on 1	Amended	Independent (+claim 1 elements)
107	Allowable	Dep. on 106	Unchanged	Dep. on 106

Claim	Status at 6-18-2002 Office Action	Status after 12-18-2002 Amendment		
108	Allowable	Dep. on 107	Unchanged	Dep. on 107
109	Allowable	Dep. on 108	Unchanged	Dep. on 108
110	Allowable	Dep. on 108	Unchanged	Dep. on 108
111	Allowable	Dep. on 106	Unchanged	Dep. on 106
112	Rejected	Dep. on 1	Canceled	n/a
113	Rejected	Dep. on 112	Canceled	n/a
114	Rejected	Dep. on 1	Canceled	n/a
115	Rejected	Dep. on 1	Canceled	n/a
116	Allowable	Dep. on 115	Amended	Independent (+claims 115, 1 elements)
117	Allowable	Dep. on 116	Unchanged	Dep. on 116
118	Rejected	Dep. on 115	Canceled	n/a
119	Allowable	Dep. on 87	Amended	Independent (+claims 87, 85, 1 elements)
120	Allowable	Dep. on 119	Unchanged	Dep. on 119
121	Allowable	Dep. on 120	Unchanged	Dep. on 120
122	Allowable	Dep. on 121	Unchanged	Dep. on 121
123	Allowable	Dep. on 121	Unchanged	Dep. on 121
124	Allowable	Dep. on 2	Amended	Independent (+claim 2 elements)
125	Allowable	Dep. on 124	Unchanged	Dep. on 124
126	Allowable	Dep. on 125	Unchanged	Dep. on 125
127	Allowable	Dep. on 126	Unchanged	Dep. on 126
128	Allowable	Dep. on 126	Unchanged	Dep. on 126
129	Rejected	Dep. on 2	Canceled	n/a
130	Rejected	Dep. on 129	Canceled	n/a
131	Rejected	Dep. on 2	Canceled	n/a
132	Rejected	Dep. on 2	Canceled	n/a
133	Allowable	Dep. on 132	Amended	Independent (+claims 132, 2 elements)
134	Allowable	Dep. on 133	Unchanged	Dep. on 133
135	Rejected	Dep. on 132	Canceled	n/a
136	Allowable	Dep. on 20	Amended	Independent (+claim 20 elements)
137	Allowable	Dep. on 136	Unchanged	Dep. on 136
138	Allowable	Dep. on 137	Unchanged	Dep. on 137
139	Allowable	Dep. on 136	Amended	Dep. on 138
140	Allowable	Dep. on 138	Canceled	n/a
141	Rejected	Dep. on 20	Canceled	n/a

Claim	Status at 6-18-2002 Office Action		Status after 12-18-2002 Amendment	
142	Rejected	Dep. on 141	Canceled	n/a
143	Rejected	Dep. on 20	Canceled	n/a
144	Allowable	Dep. on 143	Amended	Independent (+143, 20 elements)
145	Allowable	Dep. on 144	Unchanged	Dep. on 144
146	Allowable	Dep. on 91	Amended	Independent (+91, 20 elements)
147	Allowable	Dep. on 146	Unchanged	Dep. on 146
148	Allowable	Dep. on 147	Unchanged	Dep. on 147
149	Allowable	Dep. on 148	Unchanged	Dep. on 148

RECEIVED

AUG 15 2003

Technology Center 2600